IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

DEEPAK KAPOOR & COMPANY, and DKC KNITS LLC Plaintiffs, v. BUFFALO INTERNATIONAL ULC, and J.C. PENNEY CORPORATION, INC. Defendants.	)	5:16-cv-419 (GTS/ATB)

CONFIDENTIALITY STIPULATION AND ORDER

It appearing that discovery in the above-captioned action may involve the disclosure of confidential information, the parties hereby stipulate that the Court may enter the following Order:

1. Any party to this litigation shall have the right to designate as “Confidential” or “Highly Confidential – Attorney Eyes Only” (collectively referred to as “Protected Material” and subject to this Confidentiality Stipulation and Order, as applicable, any information, document, or thing, or portion or copy of any document or thing: (a) that contains trade secrets, competitively sensitive technical, marketing, financial, tax, sales or other confidential business information, or (b) that contains private or confidential personal information, or (c) that contains information

received in confidence from third parties, or (d) which the producing party otherwise believes in good faith to be entitled to protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure.

2. All Protected Material shall be used by the receiving party and their attorneys of record in this action solely for purposes of the prosecution or defense of this action, shall not be used by the receiving party for any business, commercial, competitive, personal or other purpose, and shall not be disclosed by the receiving party to anyone other than those set forth in Paragraphs 3 or 4, unless and until the restrictions herein are removed either by written agreement of counsel for the parties, or by Order of the Court.

3. Protected Material that has been designed “Confidential” shall not be made available to any person or entity, except:

a. Attorneys of record for the parties executing this Confidentiality Stipulation and Order, including co-counsel, and paralegal and secretarial assistants to counsel in connection with this litigation;

b. Independent experts, investigators, and consultants and other persons retained by attorneys for the parties executing this Confidentiality Stipulation and Order to assist them in connection with this litigation and the employees of such experts, investigators, and consultants who are assisting them;

c. Witnesses and prospective witnesses to the extent they have a demonstrated need to know in connection with their preparation for and giving of testimony in connection with this litigation;

d. Vendors retained by or for the parties to assist in preparing for pretrial discovery, trial and/or hearings including, but not limited to, court reporters, litigation support personnel, jury consultants, individuals to prepare demonstrative and audiovisual aids for use in the courtroom or in depositions or mock jury sessions, as well as their staff, stenographic, and clerical employees whose duties and responsibilities require access to such materials; and

e. The parties to this action.

4. Protected Material that has been designated "Highly Confidential – Attorney Eyes Only" shall not be made available to any person or entity, except:

a. Attorneys of record for the parties executing this Confidentiality Stipulation and Order, including co-counsel, and paralegal and secretarial assistants to counsel in connection with this litigation;

b. Independent experts, investigators, and consultants and other persons retained by attorneys for the parties executing this Confidentiality Stipulation and Order to assist them in connection with this litigation and the employees of such experts, investigators, and consultants who are assisting them;

c. Vendors retained by or for the parties to assist in preparing for pretrial discovery, trial and/or hearings including, but not limited to, court reporters, litigation support personnel, jury consultants, individuals to prepare demonstrative and audiovisual aids for use in the courtroom or in depositions or mock jury sessions, as well as their staff, stenographic, and clerical employees whose duties and responsibilities require access to such materials;

d. In-house counsel for the parties to this action.

5. Before any Protected Material of another party is disclosed to any person described in Subparagraphs 3(b), (d), or (e), or 4(b), (c), or (d) hereof, such person shall be provided with, read and execute, and retain a copy of an Agreement To Be Bound By the Confidentiality Stipulation and Order, in the form attached as Exhibit A hereto. The original of such executed Agreement shall be maintained by counsel for the party intending to make such disclosure.

6. The producing party may designate particular documents or portions thereof as "Confidential" or "Highly Confidential – Attorney Eyes Only" by stamping on each page of the document or portion thereof to be so designated with the phrase "Confidential" or "Highly Confidential – Attorney Eyes Only." If a party inadvertently fails to designate Protected Material documents as "Confidential" or "Highly Confidential – Attorney Eyes Only" prior to producing them, they may subsequently designate them as such and have such documents accorded the confidentiality imposed by this Confidentiality Stipulation and Order. When so designated, the documents shall be used only for the purposes described in Paragraph 2 hereof.

7. With respect to testimony elicited during depositions, hearings, and other proceedings, a party to this action shall have until thirty (30) days after receipt of the transcript of the deposition, hearing or other proceeding within which to provide all other parties with written notice that portions of the transcript are to be designated Confidential or Highly Confidential – Attorney Eyes Only, which period may be extended by agreement of the parties. During the thirty (30) day period, the entire transcript is to be considered "Highly Confidential – Attorney Eyes Only" and may not be disclosed to any individual other than the individuals

described in Paragraph 4 above, under the applicable conditions contained in Paragraph 5 above, and the deponent, and no individual attending such a deposition shall disclose the contents of the deposition to any individual other than those described in Paragraph 4. After the thirty (30) day period has expired, any material not designated as "Confidential" or "Highly Confidential – Attorney Eyes Only" in writing during the thirty (30) day period or any extensions thereto, shall no longer be subject to this Confidentiality Stipulation and Order. Upon being informed that certain portions of a deposition are to be designated as Confidential or Highly Confidential – Attorney Eyes Only, all parties shall immediately cause each copy of the transcript in their custody or 3 control to be appropriately marked and limit disclosure of that transcript in accordance with Paragraphs 2, 3, and 4.

8. If counsel for a party receiving documents or information designated as Confidential or Highly Confidential – Attorney Eyes Only hereunder objects to such designation of any or all of such items, the following procedure shall apply:

a. Counsel for the objecting party shall serve on the designating party a written objection to such designation, which shall describe with particularity the documents or information in question and shall state the grounds for objection. Counsel for the designating party shall respond in writing to such objection within fourteen (14) days, and shall state with particularity the grounds for asserting that the document or information is Confidential or Highly Confidential – Attorney Eyes Only. If no timely written response is made to the objection, the challenged designation will be deemed to be void in the absence of a written agreement extending the time to respond to the objection. If the designating party makes a timely response to such objection asserting the propriety of the designation, counsel shall then confer in good faith in an effort to resolve the dispute.

b. If a dispute as to a Confidential or Highly Confidential – Attorney Eyes Only designation of a document or item of information cannot be resolved by agreement, the proponent of the designation being challenged shall present the dispute to the Court initially by telephone or letter, in accordance with Rule 37 of the Federal Rules of Civil Procedure and Local Rule 7.1(d) of the Local Rules of Practice, before filing a formal motion for an order regarding the challenged designation. The document or information that is the subject of the filing shall be treated as originally designated pending resolution of the dispute.

9. Any party seeking to file papers with the Court or use papers in any Court proceeding that incorporate Protected Materials or reveal the contents thereof shall first make an 4 application to the Court for permission to file under seal the specific portions of those papers disclosing Protected Materials and shall indicate whether any other party objects to that request. No materials shall be filed under seal unless the Court has issued an order approving the filing, in which event the filing shall follow the District Court rules applicable to filing under seal.

10. All persons who are afforded access to any documents or information subject to this Confidentiality Stipulation and Order shall not use or disclose such documents or information for any purpose other than the preparation for and the conducting of this litigation, or any appellate review thereof, and then solely as contemplated herein, and shall keep the documents and information secure and confidential in accordance with the purposes and intent of this Confidentiality Stipulation and Order.

11. No information that is in the public domain or which is already known by the

receiving party through proper means or which is or becomes available to a party from a source other than the party asserting confidentiality, rightfully in possession of such information on a non-confidential basis, shall be deemed or considered to be Protected Material under this Confidentiality Stipulation and Order.

12. This Confidentiality Stipulation and Order shall not deprive any party of its right to object to discovery by any other party or on any otherwise permitted ground. This Confidentiality Stipulation and Order is being entered without prejudice to the right of any party to move the Court for modification or for relief from any of its terms.

13. This Confidentiality Stipulation and Order shall survive the termination of this action and shall remain in full force and effect unless modified by an Order of this Court or by the written stipulation of the parties filed with the Court.

14. Within thirty (30) days after the final adjudication or settlement of all claims in this litigation involving a party hereto, counsel for any party as to which all claims in this litigation have been adjudicated or settled shall destroy or return to the producing party all Protected Material subject to this Confidentiality Stipulation and Order in its possession or under its control and destroy all copies, information and notes derived from such Confidential Material other than those documents maintained as part of an official file by counsel to any party which documents will retain their Confidential or Highly Confidential – Attorney Eyes Only designation.

15. Nothing herein shall be deemed to restrict in any manner the use, by any party hereto or its counsel, of that party's own documents.

16. Nothing herein shall be deemed to constitute a waiver of any party's right to object to any request to produce, to any interrogatory, to any request to admit, to any other discovery method, or to any line of questioning at a deposition, hearing or trial, on the grounds of privilege, non-relevance or any other applicable ground, other than that the request seeks confidential documents or information. Objections on the ground of confidentiality may nevertheless be made for the record and the information shall be provided subject to the terms of this Confidentiality Stipulation and Order.

17. Nothing herein nor any action taken in compliance with this Confidentiality Stipulation and Order, shall operate as an admission by any party that any particular document or information is or is not confidential nor operate as an admission by any party that any particular document is or is not admissible at the trial of this action.

18. Nothing herein shall affect the right of any party hereto to apply to the Court for a modification of this Confidentiality Stipulation and Order, for termination of confidential handling of particular documents, or for any other purpose.

[signatures to follow on next page]

Dated: August 29, 2016

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IT IS SO ORDERED:

Andrew T. Baxter
U.S. Magistrate Judge

Dated: August 30, 2016
Syracuse, NY

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

DEEPAK KAPOOR & COMPANY, and DKC KNITS LLC Plaintiffs, v. BUFFALO INTERNATIONAL ULC, and J.C. PENNEY CORPORATION, INC. Defendants.	)	**AGREEMENT TO BE BOUND BY CONFIDENTIALITY STIPULATION AND ORDER** 5:16-cv-419 (GTS/ATB)

I ______________________________, being duly sworn, state that:

1. I have carefully read and understood the provisions of the Confidentiality Stipulation and Order in this case signed by the Court, and I will comply with all provisions of the Confidentiality Stipulation and Order.

2. I will hold in confidence and not disclose to anyone not qualified under the Confidentiality Stipulation and Order any Confidential Material or any words, summaries, abstracts, or indices of Confidential Material disclosed to me.

3. I will limit use of Confidential Material disclosed to me solely for purpose of this action.

4. No later than the final conclusion of the case, I will return all Confidential Material and summaries, abstracts, and indices thereof which come into my possession, and documents or things which I have prepared relating thereto, to counsel for the party for whom I was employed or retained.

____

Subscribed and sworn to before me
on this _____ day of August, 2016.

____
Notary Public